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Defense Authorization Analysis - 2007

An Analysis of Provisions Pertaining to the National Guard in the FY2007 National Defense Authorization Conference Report

(H.R. 5122 / H.Rpt. 109-702)

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INTRODUCTION

At more than 1,400 pages, the Conference Report on the National Defense Authorization Act of 2007 (H.Rpt.109-702) is longer than any in at least the past 20 years. Consequently, there are a great number of provisions which have some impact on the National Guard. This guide provides only a short summary and analysis of those provisions. To obtain a complete understanding of any particular provision, users are encouraged to review the actual legislative language contained in the applicable section of the law. The complete Conference Report is available at the bottom the NGB-LL web page at

[HTTP://WWW.NGB.ARMY.MIL/LL/](http://www.ngb.army.mil/ll/)

Finally, please note that this analysis pertains only to the AUTHORIZATION bill. For funding matters, please refer to analysis of the APPROPRIATIONS bill.

OVERVIEW OF FUNDING AND STRENGTH AUTHORIZATIONS

The following summarizes key aspect of the FY07 NDAA:

- \$318 M authorized for Army National Guard Equipment in Army Procurement.
- 350,000 ARNG End strength
- 107,000 ANG End strength
- 27,441 Army Guard AGRs (same as budget request)
- 13,291 Air Guard AGRs (+85 over budget request)
- 26,050 minimum number of Army Guard Dual Status Technicians(same as budget request)
- 23,255 minimum number of Air Guard Dual Status Technicians(same as budget request)
- 1,600 ARNG NDS Techs
- 350 ANG NDS Techs
- 17,000 Army Guard personnel on Active Duty for Operational Support
- 16,000 Air Guard personnel on Active Duty for Operational Support
- ARNG O&M: \$4,776,421,000.
- ANG O&M: \$5,292,517,000.

OTHER HIGH INTEREST ITEMS

- Rejects the Senate-passed National Defense Enhancement and National Guard Empowerment Act but directs that the potential negative impacts of this proposal be examined and reported on by the Commission on the National Guard and Reserves by 1 Mar 07. (See Commission note on p. 5.)
- Expands authority for National Guard personnel to support operations and to train active component and foreign military personnel inside the US. (See Operational Duties note on p. 5)
- Expands Presidential Reserve Call-up Authority from 270 to 365 days but rejects the House-passed provision which would have allowed this authority to be used to respond to disasters. (See PRC note p.4)

PROCUREMENT

Equipment Distribution. Mandates that equipment be distributed based on deployment priorities (Sec. 116) thus rejecting a Senate-adopted amendment granting priority for NG equipment to disaster states. Requires the SECDEF to submit a report NLT 1 April 2007 regarding the priority distribution strategy for replacing National Guard equipment.

KC-135 Retirement. Prohibits the Air Force from retiring more than 29 KC-135E aircraft during fiscal year 2007. USAF must maintain all retired KC-135Es, after September 30, 2006, in a condition that would allow recall of that aircraft for future service in the Air Force Reserve, Air National Guard, or regular forces aerial refueling force structure. The conferees expect the Secretary to maintain all KC-135E aircraft, retired in fiscal year 2007 or later, in a condition known as "Type-1000 storage" at the Aircraft Maintenance and Regeneration Center. (Sec.135)

OPERATIONS AND MAINTENANCE

Prioritization of Funds for Equipment. Requires CNGB comment on SECARMY report to Congress on Army Progress in budgeting resources for repair and replacement of equipment used in GWOT as well as equipment for transformation/modularity and to replenish preposition stocks. Report is due to Congress at same time as budget submission. (Sec.323)

Report on Readiness. Requires the Comptroller General to submit a report on readiness of Army and Marine Corps ground forces including reserve components. The report must include a description of the current policy of the Army and the Marine Corps with respect to the mobilization of reserve component personnel, together with an analysis of the number of reserve component personnel in each of the Army and the Marine Corps that are projected to be available for deployment under such policy. (Sec 345)

RC Equipment Transfers. Requires a SECARMY report to SECDEF within 90 days of a transfer of equipment from a reserve component unit to another RC unit ordered to active duty or to an AC unit. The report must include a plan to repair or replace the equipment and an MOU between the losing and gaining components. SECDEF must, in turn, submit quarterly reports to the Congress. (Sec.349)

MILITARY PERSONNEL POLICY

Unused NG Personnel Funds. Specifies that should Army National Guard end strength fall below the authorized number, the conferees direct that the unused additional funds may only be used for Army National Guard priorities, and only after the Department of Defense complies with the normal budget process that includes submitting prior notification and a detailed justification to Congress.

Officer Retirement Age. Increases mandatory retirement age for RC officers of the rank Brigadier General and below from 60 to 62 years, Major Generals from 62 to 64 years, and general holding certain offices (including CNGB, DARNG, DANG and TAGs) from 64 to 66 years. (Sec. 503)

Presidential Reserve Call-up. Expands the time limit for Presidential Reserve Call-up Authority from 270 to 365 days.(Sec. 522.) Does NOT include the House provision allowing use of this authority for natural disasters.

Retirement Points for 9/11 State Active Duty. Authorizes Military retirement points for NG personnel serving on SAD in New Jersey in response to attacks of 9/11. (Sec. 523)

AGR Definition. Adds an explicit definition for AGR that covers both Title 10 and Title 32 AGR personnel including those performing Full-time National Guard duty. (Sec. 524)

Operational Duties by NG Personnel. Provides that NG M-Day, T32 AGR, and Technician personnel may train active duty military, foreign military, DoD contractor, and DoD civilian personnel when the NG or unit is assigned such training missions. Provides that NG M-Day, T32 AGR, and Technician personnel may support other operational missions approved for NG by POTUS or SecDef, in the case of T32 AGRs and Technicians to the extent that performance of such duties does not interfere with the performance of their other AGR/Technician duties. (Sec. 525 & 526)

Expansion of CST operations - Adds ability to respond to a natural or manmade disaster in the United States that results in, or could result in, catastrophic loss of life or property. (Sec.527)
ADDED GUIDANCE: The conferees note that WMD-CSTs are a limited resource, and as such, their employment, other than for training and preparation, under the expanded authorities recommended by this section should consider the following: 1) whether the resources of local governments and other State resources may be or are overwhelmed by the scope and scale of the actual disaster; or 2) whether other State, local, and first-responder technical equipment and capabilities will be or are inadequate to address the potential threat.

Commission on NG and Reserve

- Tasks the Commission to study the negative aspects of National Defense Enhancement and National Guard Empowerment Act provisions "on a priority basis" and to provide a report to Congress by 1 Mar 07.
- Directs priority Commission review of the advisability and feasibility of further expanding the authority of National Guard officers to serve in both Federal status under title 10, United States Code, and State status under title 32, United States Code, as a means of achieving unity of command of units that are composed of both active-duty members and National Guard personnel. Report due by 1 Mar 07.
- Tasks the commission to study the adequacy of the DOD processes for defining the equipment and funding necessary for the National Guard to conduct both its T10 responsibilities and its responsibilities under title 32, United States Code, including homeland defense and related homeland missions, including as part of such study consideration of the extent to which those processes should be developed taking into consideration the views of the Chief of the National Guard Bureau, as well as the views of the 54 Adjutant Generals and the views of the Chiefs of the Army National Guard and the Air Guard; and whether there should be an improved means by which National Guard equipment requirements are validated by the Joint Chiefs of Staff. (Sec. 529)
- Sets final report deadline as 31 Jan 08. (Sec. 528)

30-day Deployment Notice. Requires SECDEF to report to Congress NLT 1 March 2007 on the number of members of the armed forces (with RCs broken out) who, in 2005-2005, did not receive at least 30 days notice of a deployment lasting 180 days or more. In the case of the RC, the report must show the degree of compliance or non-compliance with DOD policy. (Sec. 548)

Awards Process Comparison. Requires the SECDEF to review processes for awarding decorations, comparing processing times of active and reserve components and, if different, to take steps to address the discrepancy. A report is due to Congress by 1 August 2007. (Sec.557)

Deployment effect on RC kids. Establishes a Pilot Program On Parent Education To Promote Early Childhood Education For Dependent Children Affected By Military Deployment Or Relocation Of Military Units and requires that at least one of the installations selected be a military installation that will permit, under the pilot program, the meaningful evaluation of a model that provides

outreach to families with a parent in the National Guard or Reserve and who live more than 40 miles from the installation. (Sec. 575)

Military Retirement Funding for RC. Reduces DoD's accrual contributions to the Military Retirement Fund by requiring the Department to contribute at the lower, part-time rate for reserve component soldiers who are mobilized or on active duty for special work. (Sec.591)

Recruiter Misconduct. Requires SECDEF to review programs to prevent recruiter misconduct and to consider the Indiana National Guard "No One Alone Policy" as an example. Report due 1 March 07. (Item of Special Interest)

COMPENSATION AND OTHER PERSONNEL BENEFITS

Second BAH. Authorizes Service Secretaries to pay a second monthly basic allowance for housing in lieu of per diem to reserve component members without dependents mobilized in support of contingency operations. (Sec.604)

Service Funding of SGLI. Increases from \$150,000 to \$400,000 the amount of coverage under the Servicemembers' Group Life Insurance that the services would be required to fund for all members of the Armed Forces serving in Operation Enduring Freedom or Operation Iraqi Freedom. Last year, Services could pay for the first \$150,000 of the SGLI for members who deployed in support of OEF/OIF. Now, they can pay the full premium to cover the full amount of life insurance which the member selects. (Sec. 606)

Correspondence Course Pay. Clarifies that the prohibition on compensation for correspondence course work, including the prohibition as it relates to Guardsmen not in federal service, applies to any such work performed on or after September 7, 1962, and to any claim for compensation based on such work or study arising after that date. (Sec. 607) The conferees direct the SECDEF to review the policy regarding compensation of members of the reserve components (which include officers and enlisted personnel of the National Guard) for completing correspondence and distance learning courses. The review should include an audit of military professional education and other career development and military skills courses that are required for continued military service and advancement in the reserve component. For those courses that do not afford reserve component members practical options for attending in residence, an assessment should be completed of the feasibility and need for compensation as an incentive to complete correspondence and distance learning courses. The Secretary should report on the results of this review, including any recommendations for legislative changes, by July 31, 2007.

Bonuses & Special Pays. Extends expiration date for certain RC bonuses and special pays. (Sec.611) These include: Selected Reserve Enlistment Bonus, Selected Reserve Affiliation or Enlistment Bonus, Special Pay for Enlisted Members Assigned to Certain High Priority Units, and the Selected Reserve Enlistment Bonus for Persons with Prior Service.

Health Professional Loan Repayment. Extends to 1 Jan 2008 the repayment of education loans for healthcare professionals who serve in the selected reserve. Also extends to December 31, 2007 the special pay for selected reserve health professionals in critically short wartime specialties. (Sec.612)

Health Professional Special Pay Increased. Increases the maximum amount of special pay that may be provided to selected reserve health professionals in critical specialties from \$10,000 to \$25,000. (Sec.616)

HD-LD Bonus. Authorizes the SECDEF to pay a bonus up to \$50,000 to reserve component members volunteering for high-demand, low-density assignments. Caps funds available in 2007 for this purpose at \$5 million. (Sec.621)

Broader ESAR. Expands the "Every Soldier A Recruiter" bonus to include DA Civilians and military retirees. (Sec.624)

Interest Rate Limitation. Places limits on the consumer credit interest rates which companies can charge to members of the armed forces including RC members on active duty for periods longer than 30 days. (Sec. 670)

Family Programs Joint DoD Program. Require the Secretary of Defense to establish a joint family support program in up to six regional sites in the United States. The program would provide financial and other assistance to families of members of the Armed Forces, including sponsorship of volunteers and coordination of family assistance activities of the Department of Defense as well as other public and private entities. The program is not intended to operate in lieu of existing family support centers, but rather to augment the activities of the Department of Defense and the military departments family support centers.(Sec. 675)

Transition Assistance Programs. Requires the SECDEF to establish a working group to identify and assess the needs of RC members returning from deployment in Operation Iraqi Freedom or Operation Enduring Freedom in the transition to civilian employment. The working group must report its recommendations to Congress within 1 year on the provision of assistance to employers and employment assistance organizations, and ways to improve collaboration between the public and private sector in order to ensure the successful transition of members into civilian employment. Additionally, the working group must assess the extent to which RC members receive promotions, or experience termination of employment, upon their return from deployment in Operation Iraqi Freedom or Operation Enduring Freedom. (Sec.676) The conferees further state their belief that it is essential that DOD take action to improve the flexibility and adequacy of military transition assistance programs (TAP) for the Guard and Reserve. TAP for reservists should facilitate their reintegration into civilian life as soon as possible after their return from an overseas deployment. Such programs should be voluntary where appropriate and respect the desire of many Guardsmen and reservists to "stand down" from their military duties for appropriate periods. Therefore, the conferees urge DoD to implement and support a reintegration pilot program in a State that has a National Guard brigade returning from an overseas deployment. In the Senate Report accompanying H.R. 5631 (S. Rept. 09-292) of the Defense Appropriations Bill, 2007, the conferees note that the Senate supported funding of \$6.7 million for a reintegration initiative in connection with overseas deployment. If such a pilot program is implemented, the SECDEF must submit a report of evaluation within 90 days of its conclusion, including a recommendation regarding the feasibility of reintegration programs for members of the National Guard and Reserve. ALSO: The conferees expect the SECDEF, the Service Secretaries, and the Secretary of Labor to take steps to ensure maximum participation by members of the National Guard and Reserve, in pre-separation counseling and TAP. Military leaders should encourage and assist separating service members to develop personal transition plans prior to separation. TAP presentations programs should be scheduled during duty time to ensure all separating service members, including Guard and Reserve members, have full access and opportunity to attend. The conferees are encouraged by the new approach to the TAP for members of the Guard and Reserve and their families described in the Report to Congress on Transition Assistance and Disabled Transition Assistance Programs of May 4, 2006. The combination of a transition assistance orientation, a new web-based transition assistance portal, and an around-the-clock call center will address the full spectrum of needs and concerns of demobilizing Guard and Reserve personnel by providing the assistance whenever needed without unnecessarily delaying the members' return to their homes following deployments. The conferees encourage the expedited implementation of this new approach.

Incentive Pay Disparities. Requires SECARMY to provide a report on disparate treatment of Guard and Reserve members in the eligibility and provision of incentive pay. (Sec. 678)

RC Combat Disability Retirement. Directs the SECDEF to submit a report to Congress, not later than 1 Feb 07, comparing the compensation of reserve and active-duty members and the feasibility of modifying existing laws controlling the calculation of disability retirement benefits to ensure equal treatment of active and reserve personnel under various circumstances, including combat operations. The conferees are concerned that, particularly in the case of disabilities resulting in retirement for physical disability, which were incurred as a result of combat or combat-related training, the military compensation system must equitably treat all active and reserve component members.

HEALTH CARE PROVISIONS

TRICARE. Expands TRICARE eligibility for RC members and their families while in a non-active duty status based on payment of an amount equal to 28 percent of a monthly premium established by the SECDEF. The provision would repeal the three-tiered cost sharing program for members of the Selected Reserve established last year. All RC members are eligible except if employed by the Federal government and eligible for health benefits under Title 5. (Sec.706)

Keeping Civilian Health Insurance. Requires SECDEF to conduct a study on the feasibility of allowing dependents of activated members of the reserve components to retain civilian health care coverage. (Sec.716) Report is due 6 months after enactment of the NDAA.

PTSD Pilot Project. Establishes Pilot Projects On Early Diagnosis And Treatment Of Post Traumatic Stress Disorder And Other Mental Health Conditions. One of the pilot projects under this section shall be focused on members of the National Guard or Reserves who are located more than 40 miles from a military medical facility and who are served primarily by civilian community health resources. (Sec.741)

DoD ORGANIZATION AND MANAGEMENT

SOCOM Report. Requires SECDEF to submit a report on the posture of U.S. Special Operations Command to conduct the GWOT. Report must include an assessment whether the expansion of that command as recommended in the 2006 Quadrennial Defense Review provides an appropriate balance between active and reserve component capabilities. (Sec. 946)

GENERAL PROVISIONS

QDR Improvement. Improves the Quadrennial Defense Review by requiring it to make recommendations that are not constrained by the President's Budget Request and by including the homeland defense and support to civil authority missions of the active and reserve components. (Sec. 1031.)

Study on New COCOM for Africa. Requires the SECDEF to submit to Congress within 6 months a report on the feasibility and advisability of establishing a new unified combatant command with a geographic area of responsibility consisting of the African continent and adjacent waters. (Sec 1033)

Border Patrol Jobs for RC Members. Requires SECDEF and Secretary of Homeland Security jointly to report to Congress within 60 days of enactment regarding the feasibility and desirability of

offering incentives to RC members to serve in the Bureau of Customs and Border Protection. (Sec.1045)

Authorization Requirement for Title 32 Operations. Requires that the number of members of the National Guard on fulltime National Guard duty involuntarily and performing homeland defense activities under chapter 9 of title 32 be required to have annual authorization by Congress. (Sec. 1071)

Insurrection Act Changes. Revises the conditions under which the President may employ the armed forces, including the National Guard in Federal Service to enforce laws. (Sec. 1076)

MATTERS RELATED TO DEFENSE AGAINST TERRORISM AND RELATED SECURITY MATTERS

DOD Database of State NG Capabilities. Requires the SECDEF to maintain a database of emergency response capabilities available from each State's National Guard as reported by states and of the types of emergency response capability the DOD might be able to provide. (Sec. 1406)

ITEMS NOT INCLUDED:

- **Guard Empowerment.** The Senate-passed language of the Bond/Leahy Amendment also known as the National Defense Enhancement and National Guard Empowerment Act. Referred the matter for study by the Commission on the National Guard and Reserves. Instead, the Conferees referred this matter for priority study by the Commission on the National Guard and Reserves to be reported on to Congress by 1 Mar 07.
- **Dual-Hat Succession of Command.** The House-passed provision that would permit, with presidential authorization and consent of the Governor concerned, any National Guard officer to retain a State commission in the National Guard while serving on active duty. The provision would further allow such authorization and consent to be obtained in advance in order to establish succession to command. Instead, the Conferees referred this matter for priority study by the Commission on the National Guard and Reserves to be reported on to Congress by 1 Mar 07.
- **Border Constraints.** The Senate-passed language of the Ensign Amendment providing restrictive authority for execution of National Guard support to border security.
- **Lower RC Retired Pay Age.** The Senate-passed language of the Chambliss Amendment lowering retirement pay eligibility age for RC members who had been mobilized.